

MAR 31 2005

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS

Michael N. Milby, Clerk

HOUSTON DIVISION

HIBERNIA NATIONAL BANK,)
Plaintiff,)
)
VS.)
)
UNITED HELICOPTERS, INC.,)
CLAYTON CHENNAULT,)
BARR AIR PATROL, LLC, and)
THE UNITED STATES OF AMERICA,)
INTERNAL REVENUE SERVICE,)
Defendants)

CIVIL NO.

H-05-1100NOTICE OF REMOVAL

COMES NOW Defendant United States of America (Internal Revenue Service), and gives this Court notice of removal of the above-entitled cause now pending as Case No. 2005-10894, in the 165th Judicial District Court, Harris County, Texas, filed on or about February 15, 2005, and as grounds therefor would show the Court the following:

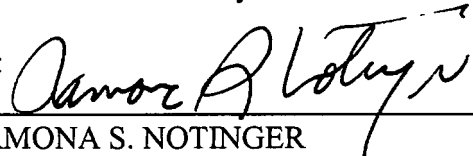
1. Plaintiffs' Original Petition for Interpleader was filed with the 165th Judicial District Court, Harris County, Texas, on or about February 15, 2005. The United States of America (Internal Revenue Service), was made a party to this action as a result of its claims against United for federal tax liabilities. A copy of the pleading received by the United States of America on or about March 29, 2005, is attached hereto as Exhibit A.

2. Plaintiff has filed its Original Petition for Interpleader for the purpose of determining entitlement of funds held by Hibernia National Bank and to be deposited into the Registry of the Court for the 165th Judicial District Court, Harris County, Texas.

3. This Notice of Removal is filed pursuant to 28 U.S.C. Sec. 1441, 1444, and 1446, said action and cause in State Court being a civil action for the purpose of determining entitlement of funds held by Hibernia National Bank, under 28 U.S.C. Sec. 2410. This Court has original subject matter jurisdiction of this action by virtue of 28 U.S.C. Sec. 1331.

United States of America (Internal Revenue Service), hereby gives notice that this action now pending in the 165th Judicial District Court, Harris County, Texas, is removed to this Court.

MICHAEL T. SHELBY
United States Attorney

By: 

RAMONA S. NOTINGER
Southern District - Texas Federal Bar No. 204
State Bar No. 19158900
Attorney, Tax Division
U.S. Department of Justice
717 N. Harwood Street, Suite 400
Dallas, Texas 75201
(214) 880-9766
(214) 880-9742 (fax)

ATTORNEYS FOR THE UNITED STATES

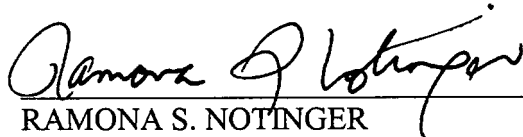
CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Notice of Removal has been made
on the 30th day of March 2005, by mailing a copy thereof to:

Fred Wahrlich
Munsch Hardt Kopf & Harr, P.C.
700 Louisiana, Suite 4600
Houston, TX 77002

Clayton Chennault
505 Meadowview Road
Rockwall, TX 75032-8939

Michael McDuffie
5574 Sugar Hill
Houston, TX 77056


RAMONA S. NOTINGER

CAUSE NO. 200510894

RECEIPT NO. 219966
02-15-20050.00 CIV
TR # 71878280

PLAINTIFF: HIBERNIA NATIONAL BANK

vs.

DEFENDANT: UNITED HELICOPTERS INC (TEXAS CORPORATION)

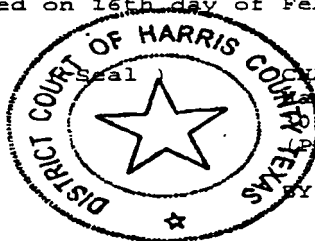
In The 165th
Judicial District Court
of Harris County, Texas
165TH DISTRICT COURT
Houston, TX

CITATION

THE STATE OF TEXAS
County of HarrisTO: UNITED STATES OF AMERICA INTERNAL REVENUE SERVICE BY SERVING ITS
DISTRICT DIRECTOR OR HIGHEST RANKING OFFICER
1919 SMITH STREET HOUSTON TX 77002Attached is a copy of PLAINTIFF'S ORIGINAL PETITIONThis instrument was filed on the 15th day of February, 2005, in the above cited cause number and court. The instrument attached describes the claim against you.

YOU HAVE BEEN SUED, You may employ an attorney. If you or your attorney do not file a written answer with the District Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of 20 days after you were served this citation and petition, a default judgment may be taken against you.

TO OFFICER SERVING:

This citation was issued on 16th day of February, 2005, under my hand and seal of said Court.Issued at request of:WAHRLICH, FRED ERIC
700 LOUISIANA #4600
HOUSTON, TX 77002
Tel: (713) 222-1470
Bar No.: 20666500CHARLES BACARISSE, District Clerk
Harris County, Texas
Fannin Houston, Texas 77002
P.O. Box 4651, Houston, Texas 77210by Tracy Miller
Deputy MILLER, TRACEY

FGT/GL1/7108691

OFFICER/AUTHORIZED PERSON RETURN

Came to hand at _____ o'clock _____ .M., on the _____ day of _____.

Executed at (address) _____ in

_____ County at 2:35 o'clock P.M., on the 22nd day of February,2005, by delivering to _____ defendant, in person, a true copy of this Citation together with the accompanying 1 copy(ies) of the

petition

attached thereto and I endorsed on said copy of the Citation the date of delivery.

To certify which I affix my hand officially this 22nd day of February, 2005.

Fee: \$ _____

_____ of _____ County, Texas

By _____

Deputy

Affiant

On this day, _____, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being by me duly sworn, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

SWORN TO AND SUBSCRIBED BEFORE ME, on this _____ day of _____.

N. INT. CITR. P



Notary Public

HOUSTON 988610_2 7837.3

4. Clayton Chennault ("Chennault") is an individual residing in Rockwall, TX and upon information and belief is claiming an interest in the Funds described below. Chennault will be served with citation and a copy of this Petition at his residence 505 Meadowview Road, Rockwall, TX 75032-8939.

5. Barr Air Patrol, LLC ("Barr") is a Texas limited liability corporation with its principal place of business in Mesquite, Texas. Barr will be served with citation and a copy of this Petition via its registered agent, Michael McDuffie, 5574 Sugar Hill, Houston, TX 77056.

6. The United States of America, Internal Revenue Service (the "IRS") is an entity of the United States government. Pursuant to 28 U.S.C § 2410(a)(5), the IRS has waived sovereign immunity, and is, therefore, subject to these proceedings. The IRS will be served with citation and a copy of this Petition at its principal place of business, Attention: District Director or Highest Ranking Officer, 1919 Smith Street, Houston, TX 77002.

Jurisdiction and Venue

7. Venue is proper in Harris County, Texas, pursuant to TEX. CIV. PRAC. & REM. CODE §15.002(a)(1) as this suit is brought in the county in which all or substantially part of the events or omissions giving rise to Hibernia's claims occurred. This Court has jurisdiction over the controversy because the damages are within the jurisdictional limits of the Court.

Summary of Interpleader

8. Hibernia is or may be subject to multiple liabilities with respect to the remaining proceeds from the sale of the Property, as described below, by United to Barr due to rival claims by United, Chennault, the IRS and, potentially, by Barr.

Background Facts

9. On or about August 13, 2002, Brazoria County recorded Notice of Federal Tax Lien Numbers 760289204 and 760289205, against United in an aggregate amount of

\$289,854.67. On or about August 14, 2002, the Secretary of State recorded Notice of Federal Tax Lien Number 760289206. (collectively, the "Tax Liens"). The Tax Liens attached to all property and rights to the property of United.

10. On May 31, 2004, United and Barr entered into an agreement whereby United sold to Barr fourteen (14) airplanes, together with all associated component parts, for \$2,000,000 (the "Property").

Cont of title ??

11. Hibernia provided Barr with the purchase money for the Property as an interest-bearing loan (the "Loan"). As additional consideration for the Loan, Hibernia received a security interest in the Property.

12. Hibernia and Barr were aware of the Tax Liens and were also aware that any transfer of the Property would be subject to those liens.

13. Barr and United agreed that a portion of the sale's proceeds, totaling \$187,000.00, would be held in an escrow account at Hibernia (the "Funds"). The express purposes of the Funds were i) to protect the value of the Property, thereby preventing the Loan from going into default, and ii) to pay the Tax Liens after United could negotiate its tax liability with the IRS.

14. On January 28, 2005, the IRS issued to United a "Discharge of Property from Federal Tax Lien" (the "Discharge"). Pursuant to the Discharge, the IRS determined that the value of its interest in certain of United's property amounted to \$94,000.00. Thus, it authorized the issuance of a certificate discharging "all assets of United, including aircrafts, vehicles, parts, inventory and miscellaneous personal business property" in exchange for a payment of \$94,000.00 "to be applied in part satisfaction...." The Discharge did not, however, release the Tax Liens or refer to the Property, and specifically reserved "the force and effect of said tax lien against and upon all other property or rights to property to which said lien is attached, wheresoever situated."

Why not part of the property?

15. On or about January 31, 2005, United and Chennault contacted Hibernia and demanded that Hibernia release the Funds to Chennault, asserting that United had obtained the discharge of both United and the Property from the Tax Liens. Hibernia released Funds to United in the amount of \$94,000.00 to pay for the Discharge. But because the Discharge did not mention or refer to the Property, and was not a general release of tax liens, Hibernia did not release the remaining \$93,000.00.

Chennault
owns
66721
16. On February 10, 2005, United and Chennault renewed their demand that Hibernia release the remaining Funds. United and Chennault also asserted that Hibernia's failure to release the remaining Funds constituted conversion.

17. On February 14, 2005, United and Chennault reiterated their demand for the Funds and gave Hibernia a deadline of 8:00 a.m. on February 15, 2005 to release the Funds. United and Chennault stated that they would construe Hibernia's failure to meet this deadline as a refusal to comply with their demand and would "proceed accordingly."

Grounds for Interpleader

18. Hibernia is subject to or reasonably anticipates rival claims to the remaining Funds. In addition to United's and Chennault's demand for the remaining Funds, Hibernia expects competing claims from the IRS and Barr. The Discharge does not specifically release United from all unpaid internal revenue tax, but is only in part satisfaction of the liability. Thus, the IRS may claim the remaining Funds or the Property as subject to its Tax Liens. Hibernia also believes that Barr may have a competing claim to the Funds because the Funds were to protect the Property from a sequestration claim by the IRS and serve as collateral to pay the Tax Liens. The Property was encumbered by the IRS's Tax Liens and sold subject to the Tax Liens. It is not clear that the Discharge releases the Property. Release of the Funds to United would, therefore, place the Loan in default. Moreover, Hibernia believes that Barr and the IRS may have

competing claims to the Funds as third-party beneficiaries or as beneficiaries to a constructive trust. The escrow account holding the Funds was created for the specific purposes of protecting Barr's collateral from the Tax Liens and paying the IRS's Tax Liens. Hibernia believes this purpose may have conferred upon Barr and the IRS third-party beneficiary rights to the Funds or created a constructive trust. As the Tax Liens remain unpaid, Barr and the IRS may have competing claims to the remaining Funds to satisfy the IRS's Tax Liens. Finally, Clayton Chennault has demanded the remaining Funds be paid to him or to a relative of his.

19. These claims are adverse and conflicting, and Hibernia is unable to determine which defendant is entitled to the remaining Funds. With respect to the remaining Funds from the sale of the Property, Hibernia, therefore, is in the position of an innocent stakeholder faced with the possibility of multiple liabilities and incidental costs.

20. Hibernia neither has, nor claims, any interest in the remaining Funds, which Hibernia has, at all times, been willing to deliver to the person entitled to possession.

21. Hibernia has in no way colluded with any defendant concerning the matters of this Interpleader action. Hibernia has not been, and will not be, indemnified in any manner by any defendant. Hibernia has filed this Petition of its own free will to avoid multiple liability and unnecessary suits and costs incidental to them.

22. Hibernia unconditionally offers, and is ready, to deposit with the Court the remaining Funds totaling \$93,000.00, which represents the entire proceeds of the Funds in Hibernia's possession.

23. Hibernia further alleges that it is entitled to recover its reasonable attorneys' fees and costs as a result of these proceedings. To date, the sum of \$4,500.00 is a reasonable fee for the services of the firm representing Hibernia in this suit.

Conclusion

Based upon the foregoing, Hibernia requests that the defendants be cited to appear and answer, interpleading their claims to the \$93,000.00 held in escrow at Hibernia, which Hibernia has tendered to the Court and, on final trial, that Hibernia have the following:

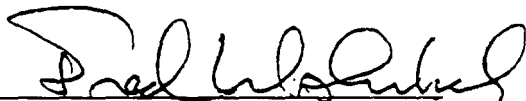
- i) That Hibernia be released and discharged from all liability to the defendants on account of the matters relating to the disposition of the \$93,000.00;
- ii) That Hibernia have and recover a reasonable fee for the services of its attorneys, together with all costs of court and expenses incurred by Hibernia in this suit, with all such fees, costs and expenses to be paid out of the \$93,000.00 prior to any award to the prevailing defendant, and
- iii) Such other and further relief to which Hibernia may be justly entitled.

DATED: February 15, 2005

Respectfully submitted,

MUNSCH HARDT KOPF & HARR, P.C.

By:


Fred Wahrlich
State Bar Number 20666500
M. Kevin Powers
State Bar Number 24041715
700 Louisiana, Suite 4600
Houston, Texas 77002
Telephone: (713) 222-1470
Facsimile: (713) 222-1475

ATTORNEYS FOR HIBERNIA NATIONAL
BANK

→ Arrangement to full pay
→ Apply for discharge
if there are funds -

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

HIBERNIA NATIONAL BANK

DEFENDANTS

UNITED HELICOPTERS, INC., CLAYTON CHENNAULT,
BARR AIR PATROL, LLC, and
THE UNITED STATES OF AMERICA (INTERNAL
REVENUE SERVICE)

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Fred Wahrlich
MUNSCH HARDT KOPF & HARR, P.C.
700 Louisiana, Suite 4600
Houston, TX 77002

Attorneys (If Known)

Ramona S. Notinger
U.S. Dept of Justice, Tax Division
717 N. Harwood St., Suite 100
Dallas, TX 75201
214/880-9766 214/880-9742 (fax)

H-05-1100

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- X ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding X ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.)

Do not cite jurisdictional statutes unless diversity.)

Civil Action brought in State Court for the purpose of determining entitlement of funds held by Hibernia National Bank. Pursuant to 28 U.S.C. § 1441, 1444, 1446, & 1331 and 2410.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes X ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/30/05

SIGNATURE OF ATTORNEY OF RECORD

Ramona S. Notinger

FOR OFFICE USE ONLY